IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19323 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AJWA FUN WORLD & RESORT LTD.
Versus
THE GUJARAT STATE FINANCIAL CORPORATION & others

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Appearance :

Mr. Navin Pahwa for M/s. Thakkar Associates for the petitioner

Mr. H.S. Munshaw for respondent Nos.1 and 2

Mr. K.G. Vakharia, Senior Advocate, with Mr. Mehul Vakharia for respondent No.3

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 29/10/2007

ORAL JUDGMENT

1 Rule. Learned advocates appearing for the concerned respondents waive service of rule. At the request of the learned advocates for the parties, this petition is taken up for final hearing today.

2 This petition under Article 226 of the Constitution of India is filed by the petitioner, who is a defaulter, seeking a prayer against respondent No.1-Gujarat State Financial Corporation to quash and set aside the auction held by it on 24th July 2007 and finalized in favour of respondent No.3, Gayatri Infrastructure Limited, as being illegal, arbitrary, contrary to the settled legal position and violative of Articles 14 and 19(1)(g) of the Constitution of India.

3 It is the case of the petitioner that the petitioner received a communication dated 30th July 2007, by which, the petitioner was asked to make payment of Rs.2.01 crore received by the Corporation in a public auction in respect of the unit of the petitioner sought to be sold in exercise of power under Section 29 of the State Financial Corporation Act, 1951 [for short, 'the Act'] and also to pay the other outstanding dues along with interest to respondent No.1-Corporation and, in case, if no response is received from the petitioner, respondent No.1-Corporation shall proceed further.

4 On 1st August 2007, the petitioner has filed this petition and on 2nd August 2007, this Court [Coram: Akshay H. Mehta, J.) passed the following order:

> "Mr Naveen Pahwa, learned advocate for the petitioner seeks permission to place communication received by his client i.e. the petitioner from the respondent dated 30th June 2007 [sic-30th July 2007] making an offer to the petitioner to take possession of the assets of the petitioner by making payment of Rs.2,01,00,000/-

within a period of 15 days from the date of the communication. The said communication is ordered to be taken on record. Mr Pahwa submits that the petitioner is willing to accept the offer of the respondent. However, the petitioner would need some time over and above the time permitted by the respondent. He also states that to prove its bona fides, the petitioner is prepared to deposit Rs.25 lakhs by way of Demand Draft with the registry of this Court by 9th August 2007.

In view of the same, notice to the respondent returnable on 10th August 2007. If the petitioner fails to deposit the aforesaid amount of Rs.25 lakhs notice will automatically stands discharged. In the meanwhile, respondent is directed not to confirm the sale.

Direct Service is permitted."

Accordingly, the petitioner sought time of more than 15 days, as provided by respondent No.1-Corporation in the letter dated 30th July 2007, and an indulgence was shown by the learned Single Judge by directing the respondent No.1-Corporation not to confirm the sale on the petitioner depositing Rs.25 lakhs by demand draft with the Registry of this Court by 9th August 2007. In pursuance of the order dated 2nd August 2007, the petitioner deposited the amount of Rs.25 lakhs with the Registry.

5 Mr. Navin Pahwa, learned counsel for the petitioner, has contended that, as per the policy of the State Government and the offer made by respondent No.1-Corporation by communication dated 30th July 2007, the petitioner is ready and willing to pay a sum of Rs.2.01 crores as offered by the highest bidder pursuant to the auction held by respondent No.1-Corporation on 24th July 2007 and, since now one-time settlement scheme floated by respondent No.1-Corporation is available

for the balance outstanding dues, the petitioner would like to avail the said benefits and, therefore, the offer received from the highest bidder, respondent No.3 herein, need not to be accepted by respondent No.1-Corporation and the auction proceedings are required to be quashed. Learned counsel for the petitioner has relied upon the decision of the Apex Court in the case of Gajraj Jain vs. State of Bihar and others, reported in (2004) 7 Supreme Court Cases 151, and submitted that, when the defaulter-borrower is ready and willing to pay the amount of the highest bidder offered in the public auction, such defaulter is to be given possession of the unit back and the auction in such type of cases need not to be continued any further. Thus, according to the petitioner, this petition deserves to be allowed.

6 Mr. H.S. Munsha, learned counsel for respondent Nos. 1 and 2, has relied upon the affidavit-in-reply filed by the Regional Manager of respondent No.1-Corporation and submitted that, as early as in 1996 the petitioner was advanced loan amount of Rs.2 crores 31 lakhs at the rate of 22% of interest to be paid in 21 quarterly installments, but the petitioner was irregular in repayment right from the beginning and, therefore, the petitioner was issued several notices to pay the outstanding dues on 7.7.1997, 5.8.1997, and 14.8.1997. Not only that, a request of the petitioner to grant reschedulement of the outstanding dues as early as in the year 1997 was also accepted, but the petitioner has failed to repay outstanding amount as per the reschedulement. Later on, the petitioner was granted second reschedulement, so that the petitioner could repay the outstanding dues. On the second occasion also, the petitioner could not make payment, with the result, notices dated 17.7.2000 and 1.9.2000 were also issued, but the petitioner was unable to repay the outstanding amount. Therefore, respondent No.1-Corporation took over possession of the property in exercise of power

under Section 29 of the Act on 21.12.2004 and the outstanding dues including interest was to the tune of Rs.8,64,50,840/- as on 26.11.2004. Since respondent No.1-Corporation had first charge, a valuation report of the land, building, plant and machinery was obtained from the Government approved valuer on 10.4.2002 and, as per the valuation report, the property was valued at that point of time at Rs.1 crore 40 lakhs and, later on, on 3.5.2006, the valuation was increased to Rs.1, 57,40,000/-. Thereafter, after following the due procedure, respondent No.1-Corporation decided to hold a public auction and, accordingly, a public advertisement was given on 2.7.2007 and respondent No.3 offered highest price of Rs.2 crore 1 lakh before the Regional Tender Committee, which came to be accepted on 24.7.2007. However, the petitioner was once again given a chance to exercise its discretion by matching the highest offer of Rs.2 crore 1 lakh within 15 days by way of demand draft and also to pay the outstanding dues with interest of other loans. Learned counsel for respondent No.1-Corporation submits that, in response to the offer made by respondent No.1-Corporation, neither the petitioner has replied nor made any request to grant further time, but straightaway filed the present petition before this Court invoking extraordinary jurisdiction under Article 226 of the Constitution of India. He further submits that, as on 31.3.2007, the outstanding amount of the petitioner comes to Rs.15 crores 79 lakhs approximately and, during the period of 11 years, the petitioner has made payment of only Rs.1 crore 72 lakhs and the Corporation has realized the total amount of Rs.2 crores 22 lakhs from the collateral securities and sale of offices and small plots of the land. According to learned counsel Mr. H.S. Munshaw, the petitioner has not approached this Court with bona fide intention and, therefore, this petition is required to be rejected.

7 Mr. K.G. Vakharia, learned Senior Advocate, assisted by Mr. Mehul

Vakharia, learned advocate for respondent No.3, has submitted that respondent No.3 is the auction purchaser in the public auction held by respondent No.1-Corporation by issuing an advertisement in the newspaper and after undergoing the procedure in accordance with law, respondent No.3 purchased the unit and, therefore, in view of the decision of the Apex Court in the case of the State Financial Corporation vs. M/s. Jagdamba Oil Mills, reported in AIR 2002 Supreme Court 834, the decision taken by the competent authority need not be disturbed by this Court in exercise of power under Article 226 of the Constitution of India and that the possession taken under Section 29 of the Act is final for all purposes. According to Mr. Vakharia, no interference is called for in the present case in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

8 Having heard the learned advocates for the parties and on perusal of the record, I am not inclined to accept the submissions made by the learned counsel for the petitioner in view of the fact that the petitioner is a defaulter since 1997, i.e. within one year from the receipt of the loan amount, and failed to pay outstanding dues in spite two reschedulements granted to petitioner from time to time by respondent No.1-Corporation. Not only that, time and again, respondent No.1-Corporation has shown indulgence to the petitioner to repay the outstanding dues, but to of no avail, and respondent No.1-Corporation, having the first charge over the land, plant and machinery of the petitioner unit, has rightly taken over possession of the unit in exercise of power under Section 29 of the Act on 21st December 2004 and, after about two and half years from the date of taking over possession, respondent No.1-Corporation, after following the due procedure, held the auction by issuing a public advertisement in the daily newspapers and, when the highest offer was received from respondent No.3 for the land, building, plant and machinery, the

petitioner, though afforded an opportunity to give a matching offer, failed to comply with communication dated 30th July 2007 of the Corporation within a reasonable time and, instead of approaching respondent No.1-Corporation with the similar request, the petitioner has invoked the jurisdiction of this Court by way of present petition to delay the auction proceedings, so that respondent No.1-Corporation may not get the price effectively.

9 The submission of Mr. Vakharia, learned Senior Advocate appearing for respondent No.3 that respondent No.3 is ready and willing to pay the amount offered by it pursuant to the auction as per the terms and conditions of the tender notice, deserves consideration. Therefore, there is no question of accepting the demand of the petitioner, who is a defaulter of more than Rs.15 crores and and 7 lakhs approximately less Rs.2.22 crores paid to the Corporation, claiming benefit of one-time settlement now. Considering the conduct of the petitioner, it does not deserve any such discretionary relief.

10 The decision relied upon by the learned counsel for the petitioner in the case of Gajraj Jain [supra] is not applicable to the facts of the present case. In Gajraj Jain [supra], no valuation report was called for by the Corporation; no inventory of assets was produced before the Court; the appellant in that case cleared dues of the Corporation on 21st March 2002 before opening of tenders on 22nd March 2002; and yet the Corporation did not return assets to the company. Even tender money deposited by the appellant was returned without any demand from the appellant. In such circumstances, the Apex Court found that the respondent-Corporation had misused its authority by taking into account extraneous matters and by ignoring relevant matters. In the present case, valuation report was prepared, tender notice was duly advertised,

auction procedure was followed in accordance with law and the Regional Tender Committed approved the same. So far as the present petitioner is concerned, it never cleared dues of the Corporation, except part payment before the date of advertisement. Hence, the ratio laid down by the Apex Court in the case of Gajraj Jain [supra] is not applicable to the facts of the present case, more particularly when the petitioner is a defaulter of more than Rs.15 crores 7 lakhs.

11 As a result of foregoing discussion, this petition is rejected. Rule is discharged. The ad-interim relief stands vacated. The office is directed to return the amount of Rs.25 lakhs deposited by the petitioner in pursuance of the order dated 2nd August 2007, forthwith. There shall be no order as to costs.

(ANANT S. DAVE, J.)

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